

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

JERRIS BLANKS,

Plaintiff

V.

WARDEN S. SALMONSON,

Defendant.

Civil Action No. 5:22-CV-00086-RWS-JBB

ORDER

Plaintiff Jerris Blanks, proceeding *pro se*, filed a petition for writ of habeas corpus that included civil rights claims. *See Jerris Blanks v. Warden S. Salmonson*, Case No. 5:21-CV-00147, Docket No. 1 (E.D. Tex. Nov. 19, 2021). Plaintiff's civil rights claims were severed from his petition for writ of habeas corpus and proceeded in the above-captioned case. Docket No. 1. The above-captioned case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636.

Plaintiff was ordered to pay the statutory filing fee or furnish an application for leave to proceed *in forma pauperis* which was accompanied by a certified inmate trust account data sheet, as required by 28 U.S.C. § 1915(a)(2). Docket No. 5. By separate order, Plaintiff was directed to file an amended complaint setting out a short and plain statement of his claims. Docket No. 6. Plaintiff received copies of these orders on October 7, 2022 (Docket No. 8) but has not complied or responded in any way.

On December 28, 2022, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court. Docket No. 9 at 2. Because it was not clear when the incidents forming the basis of the lawsuit occurred, the Magistrate Judge also recommended that the statute of limitations be suspended for a period of 60 days following the date of entry of final judgment, with such suspension affecting only claims which were not barred by limitations as of November 18, 2021 (the date the original complaint was signed). *Id.*

A copy of this Report was sent to Plaintiff at his last known address on December 29, 2022, but no objections have been received. The Fifth Circuit has explained that where a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was actually received by the person to whom it was addressed. *See Faciane v. Sun Life Assurance Company of Canada*, 931 F.3d 412, 420–21, n.9 (5th Cir. 2019). Because Plaintiff filed no objections to the Report and Recommendation, Plaintiff is barred from *de novo* review by the District Judge of those findings, conclusions and recommendations; and, except upon grounds of plain error, Plaintiff is also barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *See Arriaga v. Laxminarayan*, Case No. 4:21-CV-00203-RAS, 2021 WL 3287683, at *1 (E.D. Tex. July 31, 2021).

The Court has reviewed the pleadings and the Report and Recommendation of the Magistrate Judge. Upon such review, the Court has determined the Report and Recommendation of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989) (noting that where no objections to a Magistrate Judge’s Report and Recommendation are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law.”) Accordingly, it is

ORDERED that the Report and Recommendation of the Magistrate Judge (Docket No. 9) is **ADOPTED** as the opinion of the District Court. It is further

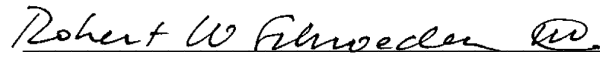
ORDERED that the above-captioned case is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court. It is further

ORDERED that the statute of limitations on the claims in this lawsuit is **SUSPENDED** for a period of sixty (60) days from the date of entry of final judgment in the case, with such suspension affecting only claims which were not barred by limitations as of November 18, 2021, the date the original complaint was signed. It is further

ORDERED that the Clerk shall send to the Plaintiff a copy of the Magistrate Judge’s Report and Recommendation along with this Order. In the event that Plaintiff in fact did not receive a copy of the Report and Recommendation, he may present any objections he may have to the Report and

Recommendation or this Order of dismissal by filing a motion for reconsideration under Fed. R. Civ. P. 59(e) (within 28 days of the entry of final judgment) or Fed. R. Civ. P. 60(b) (after 28 days from the entry of final judgment). A final judgment will be entered in this case in accordance with this Order.

So ORDERED and SIGNED this 22nd day of March, 2023.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE